

**IN THE FAMILY COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

G----- B----,)	
)	
Petitioner,)	File No. CN20-03437
)	Case No. 20-16422
v.)	
)	
R----- P----B-----,)	
)	
Respondent.)	

ORDER ON PETITION FOR CUSTODY

Date Submitted: April 26, 2021

Date Decided: April 27, 2021

David C. Gagne, Esquire, Giordano, DelCollo, Werb & Gagne, LLC, 5315 Limestone Road, Wilmington, DE 19808, *Attorney for Father*

Melissa A. Hopkins, Esquire, Hopkins & Windett, LLC, 438 South State Street, Dover, DE 19901, *Attorney for Mother*

ARRINGTON, Judge.

On April 26, 2021, the Court conducted a hearing on the Petition for Custody in the interest of G----- A. B----, III (born / /2011) and K----- M. B---- (born / /2013) (“Children”). Petitioner G----- A. B----, Jr. (“Father”), represented by David C. Gagne, Esquire; and Respondent R----- P----B---- (“Mother”), represented by Melissa A. Hopkins, Esquire, participated in the hearing.

Based upon the evidence presented, the Court’s decision is as follows.

PROCEDURAL HISTORY

On August 7, 2020, Father filed a Petition for Custody.¹ On September 1, 2020, Mother was served by personal service.

On September 22, 2020, Mother filed a Motion for Change of Venue.²

On September 23, 2020, Mother filed an Answer and Counterclaim to the Petition for Custody.³

On September 23, 2020, Mother filed a Petition for Child Support in Kent County.⁴

On October 5, 2020, Father filed an Answer to the Counterclaim.⁵ On

¹ Dkt. #1.

² Dkt. #8.

³ Dkt. #7.

⁴ Dkt. #13.

⁵ Dkt. #11.

October 5, 2020, Father filed a Response to Mother's Motion for Change of Venue.⁶

On October 22, 2020, the Court held a teleconference with the parties regarding the Motion to Change Venue. On October 22, 2020, the Court Ordered that the Motion to Change Venue was moot as Mother's counsel withdrew the Motion.⁷

On November 4, 2020, the Court granted Father's request for a 30-day extension due to a COVID-19 outbreak in the office of Father's counsel.⁸

On December 7, 2020, the Court granted Father's request for a 45-day extension due to an outbreak of COVID-19 in the office of Mother's counsel.⁹

On April 26, 2021, the Court convened the Custody Hearing.

JURISDICTION

Father resides in New Castle County, Delaware. Father alleged that he resided in New Castle County, Delaware since January 2020.

Mother resides in Kent County, Delaware. Mother has resided in Kent County, Delaware for more than six months prior to the filing of this petition.

⁶ Dkt. #12.

⁷ Dkts. #14, #15.

⁸ Dkt. #16.

⁹ Dkt. #17.

On September 22 and 23, 2020, Mother filed a Motion for Change of Venue to Kent County, Delaware. Following a teleconference on October 22, 2020, Mother withdrew her Motion and the Court denied the application as moot.

Jurisdiction is in the New Castle County Family Court of the State of Delaware without contest of the parties.

TESTIMONY OF THE PARTIES

Father's Position

Father seeks joint custody and shared residential placement of the Children on a 2-2-3 schedule. Father wishes to have custodial time with the Children on a two-week schedule consisting of alternating weekends and two week nights that change weekly so that the children are not away from either parent for more than three days.

Paternal Grandfather

Father presented G----- B----, Sr. ("Paternal Grandfather") as his first witness. Paternal Grandfather testified that he is a Lieutenant for the Philadelphia Police Department, where he has been working for over 33 years. Paternal Grandfather stated that he resides in Philadelphia, Pennsylvania but regularly visits Delaware.

Paternal Grandfather testified that the parents resided near Paternal Great Grandmother's home in Bear, Delaware for approximately three years when the children were younger. Paternal Grandfather stated that when the family resided in

Bear, Delaware, he and Paternal Great Grandmother did not have any restrictions on how often they could visit with the children. Paternal Grandfather testified that Paternal Great Grandmother, Paternal Great Aunt, and/or he would watch the children frequently.

Paternal Grandfather testified that he is able to visit with the children at Paternal Great Grandmother's house "at least one day" of Father's alternate weekends. Paternal Grandfather stated that the children enjoy spending time at the home and visiting with the paternal family. Paternal Grandfather testified that the children have friends in the neighborhood with whom they ride bicycles and swing. Paternal Grandfather stated that the children do not want to leave after their visits.

Paternal Grandfather described the children as loving. Paternal Grandfather stated that the nine-year-old son is a quiet and compassionate straight-A student. Paternal Grandfather referred to his grandson as "G3," a nickname the paternal family uses for G-----, III. Paternal Grandfather testified that G3 enjoys playing videogames, riding his motorized bicycle, and spending time with Father. Paternal Grandfather stated that G3 wants to be a football player when he grows up. Paternal Grandfather described the seven-year-old daughter as outgoing and a "daddy's girl." Paternal Grandfather referred to his granddaughter by the family nickname of "KB." Paternal Grandfather testified that KB loves "her doll babies."

Paternal Grandfather testified that the children have an excellent relationship with Father. Paternal Grandfather stated that the children love and adore Father. Paternal Grandfather testified that Father wishes to spend more time with the children.

Paternal Grandfather testified that he feels it is of particular importance that African American children have a strong relationship with their father. Paternal Grandfather explained that if Father is not involved in the children's lives that the children could become involved in "other things." Paternal Grandfather testified that Father's involvement in the children's lives "could govern [their] interactions" and success.

Paternal Great Aunt

Father called V----- B---- ("Paternal Great Aunt") as his second witness. Paternal Great Aunt testified that she resides with Paternal Great Grandmother in Bear, Delaware. Paternal Great Aunt testified that she has known the children "since they were born."

Paternal Great Aunt testified that when the parents lived close to Bear, Delaware, she saw the children three to four times per week. Paternal Great Aunt stated that she would frequently babysit the children. Paternal Great Aunt testified that the only time she has been able to see children since the parents' separation is when Father has the children on alternate weekends.

Paternal Great Aunt testified that the children love spending time with Father. Paternal Great Aunt described the children as “happy” and “regular little kids” that “run all over the place” and want to go where Father goes and do what Father does. Paternal Great Aunt stated that G3 (who she called “Little Man”) enjoys playing video games and helping around the home. Paternal Great Aunt stated that KB enjoys her baby dolls, coloring books, and playing with the dogs. Paternal Great Aunt testified that the children do not have any specific behavioral issues and that they respond well to Father.

Father

Father testified as the final witness in his case. Father testified that he is a 34-year-old police officer in Elkton, Maryland. Father stated that his current work schedule is a 2-2-3 rotation that alternates between twelve hour shifts of day work and night work every two weeks.

Father testified that he lives with his fiancée, B---- B-----, in a three bedroom, two and one-half bath townhouse in Bear, Delaware. Father testified that he and Ms. B----- moved into the townhome on January 15, 2021. Father testified that the children each have their own bedroom in the home.¹⁰ Father testified that Ms. B----- works Monday through Friday from 9:00 a.m. until 5:00 p.m. Father testified that Ms. B----- works one night per week at Wawa. Father testified that on the rare

¹⁰ Father’s Ex. 1.

occasion that he is working on days when he has the children, either Ms. B-----, Paternal Great Aunt, or Paternal Great Grandmother would provide transportation for the children to and from school or Mother's home.

Father testified that he and Mother moved to Newark, Delaware in 2013. Father stated that the parents remained in Newark until they moved to Dover, Delaware in 2017. Father testified that he moved to Elkton, Maryland when he left the marital residence in January 2020. Father explained that when the parents lived in Newark, the paternal side of the family often watched the children and provided transportation to and from daycare, particularly when the parents had to work late.

Father testified that since he left the marital home in January 2020, he is limited to overnight visits with the children every other weekend from Friday to Sunday. Father testified that while he wished to spend more time with the children, Mother did not want to disrupt the children's schedule with school, so Mother did not allow the children to stay with Father overnight during the week. Father testified that on his days off, he travels to Dover to spend time with the children. Father stated that he and the children walk around the mall and have dinner together. Father testified that Mother often requests that Father complete homework with the children during the weekly visit and on the weekend.¹¹

¹¹ Mother's testimony was that the Children complete their work during the virtual day except for Wednesdays which is an "unstructured day." It was never clarified what work Father was asked to assist the Children in completing.

Father testified that the parents communicate poorly. Father stated that Mother frequently fails to respond to text messages, and that when she does respond it is usually not until the following day. Father testified that Mother does not answer the phone when he calls and that Mother does not return the phone calls. Father stated that he typically has to call Maternal Grandmother to relay information to Mother. Father testified that he acquires all of his information regarding the children from G3.

Father testified as to an incident that occurred between the parents on July 23, 2020. Father testified that he was dropping the children off after a visit when he and Mother got into an argument. Father admitted that he and Mother were discussing a possible reconciliation, as they had done two or three times in the past, but that Father informed Mother that he did not wish to reconcile. Father testified that Mother began to yell, slammed the front door, and chased Father outside with the head of a baby doll in her hands. Father testified that Mother stood directly next to, or in front of, the car to prevent Father from leaving. Father stated that Mother placed her foot under the rear tire of the vehicle so that if Father were to back the vehicle up, it would run over her foot.¹²

¹² Father's Ex. 2 (video of incident).

Father testified that he picks up the children and drops them off at Maternal Grandmother's home in Magnolia, Delaware, approximately 45 minutes from Father's home. Father stated that he believes the children have been staying with Maternal Grandmother most nights during the school week. Father stated that he often checks the location of the children through the "Find My Phone" App to see where they are. Father provided screenshots that showed the children's phones were at Maternal Grandmother's home from February 22, 2021 until February 24, 2021.¹³

Father testified that the children have a good relationship with Ms. B----- . Father stated that the children had only spent time with Ms. B----- a handful of times prior to Father and Ms. B----- moving into a home together. Father testified that Ms. B----- makes the children cookies, plays games with them, stays up with them, cooks for them, plays catch with them, and rides bikes with them. Father stated that KB mentioned that it "feels like [we] are a family."

Father testified that the children love spending time at Father's house because they each have their own bedroom. Father stated that the last time he was at Mother's home, the children were sharing a bedroom with a curtain dividing the room. Father testified that KB is frightened at Mother's due to a fire that happened

¹³ Father's Ex. 3.

in the home.¹⁴ Father testified that Mother did not inform him of the fire. Father testified that the children have a friend, , in Father's neighborhood. Father testified that he plays video games together with G3, races, wrestles, and plays catch. Father testified that he will play "doll babies" with KB, make slime, and watch TikToks. Father stated that he attempted to teach her how to ride a bicycle but was not successful.

Father testified that Mother told him that she does not want the children around Ms. B----- and to "keep them away." Father stated that the Children informed him that Mother hates Ms. B-----.

Father testified that he is in good health. Father testified that since he left the marital home, he has not been informed about the children's health. Father stated that he only finds out about a doctor visit after the fact, when he gets the claim on his insurance. Father testified that prior to the parents' separation, Mother would schedule the appointments and Father would take the children to the appointments. Father admitted that he has not directly asked Mother to inform him when appointments are scheduled, but stated that he has told Mother that he wishes to be "more involved and know what is going on."

¹⁴ Father provided a photo that KB sent him of the spot on the carpet following the fire. Father's Ex. 4.

Father stated that the children went to visit Paternal Grandmother in Atlanta, Georgia during the summer of 2020. Father stated that the children were supposed to stay with Paternal Grandmother until the end of July when Father picked them up. Father testified that, without his knowledge or consent, Mother traveled to Atlanta to pick the children up in the beginning of July 2020. Father stated that he found out when Paternal Grandmother called Father and told him that Mother was at the house to pick up the children.

Father testified that he feels it is very important for him, as an African American Father, to be involved in the children's lives. Father stated that working as a School Resource Officer, when many young males had issues, nine times out of ten, the children did not have fathers in their lives.

Father testified that, while he is interested in the children attending school in the Appoquinimick School District, he feels the children should remain in the Capitol School District unless the parents agree otherwise. Father stated that the school children currently attend is 35 to 40 minutes away from his residence. Father testified that he is willing and able to transport the children to and from their current school. Father testified that he assists the children with their homework when he is aware of it. Father testified that Mother does not allow the children to bring their Chromebooks with them to do their school work, so Father purchased the children additional Chromebooks. Father stated he only has information for

G3's primary teacher. Father testified that he participated in all parent-teacher conferences prior to the parents' separation, but that he has not participated in one since he left the marital residence.

Father testified that he currently provides Mother with \$500.00 per month to support the children. Father stated that he believes he has been providing the money for approximately one year. Father stated that he decided on the figure of \$500.00 per month because he continues to purchase the children clothing, shoes, and other items as Mother does not allow the children to bring their belongings to Father's home.

Mother's Position

Mother seeks joint custody and primary residential placement. Mother wishes for the schedule to remain as it has been since the parents' separation with Father having custodial time with the children on alternate weekends.

Maternal Grandmother

Mother called T----- C---- ("Maternal Grandmother") as her first witness. Maternal Grandmother testified that she is retired from the Philadelphia Police Department and currently works from home as a seasonal employee for the State of Delaware Department of Correction.

Maternal Grandmother testified that she and Mother split responsibilities when it comes to the children's schooling. Maternal Grandmother testified that she

ensured the children log on to Zoom for school on the days that schooling is done virtually. Maternal Grandmother testified that if Mother is off from work, each of them helps one child with their schooling for the day. Maternal Grandmother testified that Mother has always been involved in the children's education. Maternal Grandmother testified that Father was involved in the children's education when the children were younger, but that he is no longer involved.

Maternal Grandmother testified that she watches the children when Mother is at work. Maternal Grandmother stated that Mother currently works three days per week for twelve hours per day. Maternal Grandmother stated that Mother's days off rotate. Maternal Grandmother testified that when Mother works, the children stay with Maternal Grandmother overnight. Maternal Grandmother stated that Mother comes to Maternal Grandmother's house when she gets off from work and stays over so that she is there in the morning. Maternal Grandmother testified that the children each have their own room at Mother's home and that Mother sleeps on the sofa in the living room.

Maternal Grandmother testified that the children have a wonderful relationship with Mother. Maternal Grandmother stated that the children love Mother and miss her when they are away. Maternal Grandmother testified that she believes the Children's relationship with Father is "OK" but that Father does not provide any discipline or help with the children's education. Maternal Grandmother

stated that she believes Father feels that “something” has to be done to show love. Maternal Grandmother explained that she believes this because when Mother went to pick the children up from Paternal Grandmother in Atlanta over the summer of 2020, Father was upset because Mother “didn’t even take them anywhere.”

Maternal Grandmother testified that the children are not currently enrolled in any extracurricular activities due to the pandemic. Maternal Grandmother stated that prior to the pandemic, G3 was involved in karate and KB was involved in gymnastics and dance. Maternal Grandmother testified that Mother transported the children to the activities.

Maternal Grandmother testified that she used to relay messages back and forth between the parents on a daily basis. Maternal Grandmother stated that Father only contacts her “sometimes” to get in touch with Mother now.

Mother

Mother testified as the final witness for her case. Mother testified that she lives in a two bedroom, two bathroom apartment in Dover. Mother testified that the children each have their own room and that Mother sleeps in the living room. Mother explained that when Father saw the children sharing a room it was because Mother was moving furniture around in the apartment. Mother testified that the children have friends in their old neighborhood in Dover which is approximately ten minutes from Mother’s apartment.

Mother testified that a fire occurred in her apartment when a candle was knocked over in the middle of the night. Mother stated that she believes one of the children knocked the candle over when they were using the bathroom during the night. Mother testified that she was asleep and had left the candle burning when the incident occurred. Mother testified that the fire department was called for the incident but that the damage has since been cleaned up. Mother stated that she told Father about the incident over the phone.

Mother testified that she feels the schedule should remain the same with split school breaks and a split summer. Mother explained that she feels she should continue to have primary placement of the children because Mother handles the children's school and chores.

Mother testified that she does school with the children on Zoom on days that she is off. Mother testified that on Wednesdays, the children are able to catch up on all of their work and projects. Mother testified that the children do not have any school work outside of Zoom hours. Mother later testified that she sends the work that the children do not finish with Father.

Mother testified that she has always been the one to participate in the children's education, and that Father does not participate or assist. Mother stated that instead of helping the children with their schoolwork, Father will bring the

Children home early from a visit. Mother stated that if Father helps the children with their work, it is actually Father who has completed the work.

Mother testified that she has a large family but that only Maternal Grandmother lives nearby. Mother testified that the children have a good relationship with Mother's family and that the children typically see Mother's family during the holidays and on birthdays.

Mother testified that neither she nor the children have any physical or mental health problems. Mother stated that she has always been the parent to schedule and attend doctor and dentist appointments. Mother testified that Father has not contacted her about the children's medical appointments. On direct examination, Mother testified that Father attended some appointments, but not all, prior to the parents' separation. On cross examination, Mother testified that Father has never attended any of the children's appointments.

Mother testified that she currently works three days per week from 9:00 a.m. until 9:00 p.m. Mother stated that her schedule will be changing in June 2021 to 9:00 a.m. to 4:00 p.m., Mondays through Fridays.

Mother testified that she only communicates with Father through text messages so that she can document what is said. Mother stated that she and Father only communicate about the children. Mother admitted that there are times she

does not text Father back until the following day because she cannot have her phone at work and she goes right to bed when she gets off from work.

Mother denied telling Father that he could only have alternate weekends for visitation with the children. On direct examination, Mother testified that alternate weekend visitation was all Father's work schedule allowed. On cross examination, Mother testified that she and Father came up with the visitation schedule together. Mother testified that Father never complained about the schedule before, and that Father has not asked for additional time with the children since the parents' separation.¹⁵

Mother testified that the incident on July 23, 2020, occurred after the parents had a conversation about reconciliation. Mother testified that Father left but Mother wanted to continue to speak to Father. Mother denies that her foot was under the tire. On cross examination, Mother testified that prior to Father starting the recording, Father attempted to run over Mother with the vehicle. Mother testified that she was fearful. Mother admitted that if she was scared, she would have removed herself from the situation. A video introduced by Father documents the incident.

¹⁵ The Court notes that Father filed this petition in August 2020. Father made it known that he wished to spend more time with the children nearly nine months ago.

LEGAL STANDARD

Since the Court has never entered a final order on custody, residency, and visitation for the child after a full hearing on the merits, the Court must analyze the factors under 13 *Del. C.* §722¹⁶ to create an Order that is in the child's best interest. Additionally, the Court shall award both parents frequent and meaningful contact unless the Court finds, after a hearing, that contact of the child with one parent

¹⁶ 13 *Del C.* §722(a): The Court shall determine the legal custody and residential arrangements for a child in accordance with the best interest of the child. In determining the best interests of the child, the Court shall consider all relevant factors including:

- (1) The wishes of the child's parent or parents as to his or her custody and residential arrangements;
- (2) The wishes of the child as to his or her custodian or custodians and residential arrangements;
- (3) The interaction and interrelationship of the child with his or her parents, grandparents, siblings, persons cohabiting in the relationship of husband and wife with a parent of the child, any other residents of the household or persons who may significantly affect the child's best interests;
- (4) The child's adjustment to his or her home, school and community;
- (5) The mental and physical health of all individuals involved;
- (6) Past and present compliance by both parents with their rights and responsibilities to their child under § 701 of this title;
- (7) Evidence of domestic violence as provided for in Chapter 7A of this title; and
- (8) The criminal history of any party or any other resident of the household including whether the criminal history contains pleas of guilty or no contest or a conviction of a criminal offense.

would endanger the child's physical health or significantly impair his or her emotional development.¹⁷

CUSTODY FACTORS

The Court is required to consider the eight best interest factors in determining the custody and residential placement of children.¹⁸ While parties may introduce evidence on other issues supporting their claims or defenses, analysis of the eight custody factors is required and carry great weight.

1. The wishes of the child's parent or parents as to his or her custody and residential arrangements;

The parties are in agreement that joint custody is in the Children's best interest and appropriate in this case. The difference is in their positions on placement.

Mother favors the current schedule in which Father has alternating weekends and a dinner visit. Mother believes that Father agreed to this schedule and, according to Mother's counterclaim, only petitioned for custody after Mother filed for Child Support. Mother's beliefs are unfounded. Father filed for custody on August 7, 2020. Mother filed for Child Support (Petition No. 20-21284) on September 23, 2020. The testimony was equally clear that Father has not agreed to

¹⁷ 13 Del. C. §728(a).

¹⁸ 13 Del.C. §722(a).

the current schedule. Rather, Father has shown restraint throughout the case to not take unilateral action prior to the Court issuing its decision. Mother suggests alternating weekends, shared winter and spring breaks, and equal division of the summer with each parent having four weeks.

Father believes that a shared placement is in the Children's best interest. Father testified that his work schedule is tailor-made for shared placement as he is off on weekends and works a rotating twelve-hour shift that will allow him to be available for the bulk of each custodial day with the Children.

Father's position is stronger than Mother's in this particular case but Mother's belief is supported in Mother's mind. The Court recognizes that each parent has the best interests of the Children in mind with this factor.

Factor one is neutral.

2. *The wishes of the child as to his or her custodian or custodians and residential arrangements;*

The Children are too young to adequately express their wishes. However, the testimony from the Paternal Grandfather and the Maternal Grandmother shows that the Children are excited to see each parent after visiting with the other.

Factor two is neutral.

3. The interaction and interrelationship of the child with his or her parents, grandparents, siblings, persons cohabitating in the relationship of husband and wife with a parent of the child, any other residents of the household or persons who may significantly affect the child's best interests;

According to Paternal Grandfather, Father is an exceptional parent. According to Maternal Grandmother, Mother is an exceptional parent. More important is the care that each parent showed in their testimony. While Mother has a slight "edge" in her testimony, it appears to be based more on discord from the demise of the marital relationship and some discussion of possible reunification. It is clear that the Children are well-bonded with each parent, in their own way, and appreciate each parent equally.

Father has more family in the immediate area than Mother. Consequently, the Children have broader contact and involvement with Father's family than with Mother's family. Father lives within ten minutes of his own grandmother and aunt who would see the Children regularly until the parties separated. Father now lives with his fiancée in a home rented by the couple. The testimony was clear that the Children enjoy the fiancée and the bond is strengthening.

The Children have a very strong relationship with their Maternal Grandmother who helps care for the Children when Mother is working. Additionally, Mother has relatives within driving distance and testified that they get together fairly regularly for birthdays and holidays.

The Children have friends in Father's neighborhood and in Mother's neighborhood.

Factor three is neutral.

4. *The child's adjustment to his or her home, school and community;*

Father resides in a three bedroom, two and one-half bath townhome in Bear, Delaware with his fiancée. The Children have their own bedrooms. Father's home is in the Appoquinimink School District. Father testified that during the marriage the parties discussed sending the Children to a school in the Appoquinimink District. Father believes that Appoquinimink is superior to the Capital School District but also believes that consistency for the Children is more important at this time. As a result, Father does not suggest that the Children change schools. Father's relatives live approximately ten minutes from Father and are willing to assist with transportation if needed.

Mother has a two-bedroom apartment in Dover. It was unclear from the testimony whether the Children share a bedroom which has, or had, a curtain dividing the space, or whether they each have a room. Mother testified that she sleeps on the couch. At present, Mother is working twelve-hour shifts (from 9:00 a.m. to 9:00 p.m.) three days per week. The Children will regularly stay with their Maternal Grandmother during these periods, and the Maternal Grandmother will supervise the Children's virtual school attendance.

Children attend North Dover Elementary School in the Capital School District. Both parents testified that the Children perform well in school.

Factor four weighs slightly in favor of Father.

5. *The mental and physical health of all individuals involved;*

Both parties testified that they are in fine mental and physical health. The Children are in good mental and physical health.

Factor five is neutral.

6. *Past and present compliance by both parties with their rights and responsibilities to their child under § 701 of this title;*¹⁹

Factor six is difficult to analyze as the evidence was most contrasting between the parties. Mother claims that she has been the primary caretaker for the Children with Father's consent. Father contests the claim and testified that he has tried to co-parent since separation but has been hampered by restrictions imposed by Mother. Five incidents specific to this topic are discussed below.

Father's petition was filed in August 2020, using "C Court, Bear, Delaware" as his residence. Mother filed for a change of venue claiming that Father lived in Elkton, Maryland. Father responded in objection and provided copies of his driver's license, car insurance, car registration, and bank statement showing the

¹⁹ 13 Del. C. § 701(a) states in relevant part: "The father and mother are the joint natural guardians of their minor child and are equally charged with the child's support, care, nurture, welfare, and education."

Bear address. Mother withdrew her motion and trial was scheduled. At trial, however, Father testified that he lived at his Father's residence in Elkton, Maryland until January 2021 when he rented his home in Delaware. Paternal Grandfather denied that he lived in Maryland and testified that he continues to live in Philadelphia. It is clear from the evidence at trial that Father was less than candid about his residence in his filing. This lack of candor casts a pall over his testimony making his testimony on this factor less credible than Mother.

Father testified that, when the parties were together, Mother would schedule appointments and Father would take the Children to see the doctors. Mother first testified that Father went to a few of the appointments but later stated that he never attended *any* of them. In this regard, Mother's testimony was self-contradicting. On cross-examination, Mother testified that she never told Father about appointments for the Children since separation. Father similarly testified but conceded that he did not ask due to the poor communications between the parties. The Court finds that Father did attend some, but certainly not all, of the appointments.

Father testified that the Children went to Georgia in June 2020 to visit with their Paternal Grandmother through the end of July. Mother unilaterally decided that the Children had been there long enough and, in early July, went to Georgia and brought the Children back to Delaware. Maternal Grandmother attempted to

paint this incident as an example that Father has a “Disney World” view of parenting, when the facts showed only that Mother decided she wanted the Children. The Court finds that Mother interfered in the vacation that the Children had with their Paternal Grandmother without justification.

Father presented a video from late July 2020 in which Mother interfered with Father leaving despite Father’s calm instructions to allow him to drive away. Mother is viewed tapping on the car window and repeatedly stating, “I want to talk with you.” Father testified that Mother placed her foot behind the car tire such that he could not drive away without running over Mother’s foot. Mother called Maternal Grandmother and asked Father to speak with her. Father stated that Mother was not allowing him to leave. Maternal Grandmother testified that she told Mother to “just let him go” but Mother remained. Eventually, Father asked a stander by to call a Dover policeman who was in the parking lot. As the officer approached the car, Mother left and went to her apartment. Mother testified that she did not have her foot behind the tire and that Father had attempted to run her over prior to the video. Father’s counsel questioned Mother about why she stayed if Father had attempted to run over her. Mother had no answer to the question, but the facts were clear that Mother prevented Father from leaving until the Dover police officer was approaching the car. This incident occurred after Mother had gone to Georgia to

bring the Children home. Whether or not the two incidents are related, it is evidence of a lack of judgment.

Every parent has a responsibility to provide support for their Children. Father left the marital home in 2019 but did not provide support until the middle of 2020. Mother filed for Child Support but Father was not served. Father currently provides some support, approximately \$500 per month, for the Children.

Factor six addresses each party's actions as parents. The above-described incidents show an immature approach for each parent's interaction with the other parent. However, the parents do have a rather mature approach to their Children's education and well-being. Mother has provided more care for the Children since the separation and, consequently, *factor six slightly favors Mother*.

7. Evidence of domestic violence as provided for in Chapter 7A of this title;²⁰

Counsel for the parties stipulated that there is no domestic violence between the parties. There are no filings for Orders of Protection from Abuse and no criminal charges related to domestic violence.

Factor seven is neutral.

²⁰ 13 Del. C. § 706A in relevant part states:

(a) Any evidence of a past or present act of domestic violence, whether or not committed in the presence of the child, is a relevant factor that must be considered by the court in determining the legal custody and residential arrangements in accordance with the best interests of the child.

8. The criminal history of any party or any other resident of the household including whether the criminal history contains pleas of guilty or no contest or a conviction of a criminal offense.

Neither party has a criminal record that would cause the Court concern in deciding custody and visitation of the children.

Factor eight is neutral.

CONCLUSION

In determining custody, no single factor is determinative. Rather, the Court must weigh the totality of the circumstances and reach a decision that will best serve the Child. From the evidence presented during the hearing on April 26, 2021 and upon consideration of the enumerated best interest factors, the Court finds that Factor 4 slightly favors Father, and factor 6 slightly favors Mother. Factors 1, 2, 3, 5, 7, and 8 are all neutral. More importantly, each parent has played an important role, to the extent permitted by the other, in the Children's lives. No single factor carries more weight than another in this case.

As requested by the parties, the Court shall award the parties **JOINT LEGAL CUSTODY** of the Children. As joint custodians, the parties must discuss all of the major decisions in the Children's life before reaching a decision. These decisions include, but are not limited to the Children's support, care, nurture, welfare and education.

The parties shall have **SHARED RESIDENTIAL PLACEMENT** of Children. Through the testimony presented, the Court has determined that both parents love the Children and each has the ability to work for the Children's best interest as co-equal parents. The Children are fortunate to have strong connections to each parent's family and are building a positive bond with Father's fiancée. While the parents have had a "rocky road" with their divorce, each has moved toward an independent life. However, such independence cannot take precedence over the Children's needs for a unified approach to parenting. This takes work but each parent is more than able to do their part to ensure that the Children have a happy and productive childhood.

Of significance is Father's statement that he does not intend to change the Children's school at present. This decision will provide stability for the Children in the early stages of implementation of this Order. As the Children age, there will be decisions to make on their education in the future. Both parents are focused on the Children's school choices and need to keep open minds as to which school district will best serve their needs.

Children need both parents equally even though their parenting style may differ. In particular, as highlighted in the testimony of Father and the Paternal Grandfather, the role of a Father is important. It helps the parties' son appreciate the support of a caring father and helps the parties' daughter appreciate the

importance of each parent in the blended family. In this case, the parties' work schedules and mature approaches to parenting are, as Father's counsel argued in his Closing, a perfect fit for shared placement. Father requested the opportunity to co-parent the children which has not been possible in the last eighteen months. This Order provides for that opportunity. The Court expects that each parent will take full advantage of the opportunity and work cooperatively for their Children's best interests.

ORDER

IT IS HEREBY ORDERED this 27th day of April 2021:

1. The parties shall have **JOINT LEGAL CUSTODY** of G----- A. B----, III (born / /2011) and K----- M. B---- (born / /2013). The parents shall discuss all appointments and extracurricular activities in advance of scheduling such events. If possible, the date shall be selected so that both parents are available, and both parents shall have the option of attending any medical appointment or extracurricular activity for the Children. All school information shall be shared between the parents without request from the other parent.

2. The parties shall have **SHARED RESIDENTIAL PLACEMENT** of the Children.

3. **Alternating Regular Schedule.**

a. Commencing Friday, April 30, 2021, Father shall have alternate weekends from the end of school on Friday until the start of school on

Mondays. Father shall have the Children from the end of school on Wednesdays until the start of school on Fridays following Father's weekends. Father shall have the Children from the end of school on Mondays until the start of school on Wednesdays following Mother's weekends.

- b. Commencing Friday, May 7, 2021, Mother shall have alternate weekends from the end of school on Friday until the start of school on Mondays. Mother shall have the Children from the end of school on Wednesdays until the start of school on Fridays following Mother's weekends. Mother shall have the Children from the end of school on Mondays until the start of school on Wednesdays following Father's weekends.
- c. If school is not in session on a particular day of exchange, the parent ending his or her custodial period shall retain custodial care until 3:30 p.m. on such day. The parents shall discuss where the Children will be during the day as well as from where the exchange will occur.
- d. Each parent shall be responsible for transporting the Children from school at the start of their custodial period and to school at the end of their custodial period. Any person well-known to the Children shall be able to provide transportation for the Children if the parent is unable.

4. **Summer Vacations.** Each parent shall have the opportunity to have the Children for two uninterrupted weeks of summer vacation which may be consecutive in each parent's discretion. Mother shall select the weeks of her summer vacation first in all odd-numbered years. Father shall select the weeks of his summer vacation first in all even-numbered years. For the summer of 2021, Mother shall inform Father of her choice of weeks by May 15, 2021, and Father shall select his weeks by June 1, 2021. Neither party may choose a week that interferes with Mother's Day, Father's Day, July 4th, or Labor Day on the rotating holiday schedule. In 2022 and all subsequent years, the parent with first choice shall inform the other parent of their selection by April 1st of such year. The other parent shall select his or her week by May 1st.

5. All other periods of time, including Winter and Spring Break shall follow the Alternating Regular Schedule unless otherwise mutually agreed.

6. Transportation during the summers shall be shared with the person starting their custodial time being responsible for picking up the Children. Any person well-known to the Children shall be able to provide transportation for the Children if the parent is unable.

7. **Holidays:** The holiday schedule shall take precedence over the Alternating Regular Schedule. Mother shall have the children on the holidays in Column 1 in odd-numbered years and the holidays in Column 2 in the even-

numbered years. Father shall have the children on the holidays in Column 1 in the even-numbered years and the holidays in Column 2 in the odd-numbered years.

Column 1

Easter or other religious holiday
Fourth of July
Christmas Day

Column 2

Memorial Day
Labor Day
Thanksgiving Weekend
Christmas Eve

UNLESS MUTUALLY AGREED TO THE CONTRARY:

- a. Easter holiday shall be from 7:00 p.m. on Saturday before Easter until 7:00 p.m. on Easter Sunday.
- b. Memorial Day and Labor Day shall be from 9:00 a.m. until 7:00 p.m. on each of the holidays.
- c. July 4th shall be from 9:00 a.m. on July 4th until 9:00 a.m. on July 5th.
- d. Thanksgiving weekend shall be from 9:00 a.m. on Thanksgiving morning until 7:00 p.m. on the Sunday following Thanksgiving.
- e. Christmas Eve shall be from 9:00 a.m. on December 24th until noon on December 25th.
- f. Christmas Day shall be from noon on December 25th until 7:00 p.m. on December 26th.

8. **Mother's/Father's Day:** On Mother's Day and Father's Day, no matter whose turn for contact, the children shall be with the parent whose holiday is being celebrated from 9:00 a.m. until 7:00 p.m.

9. **Cancelling contact:** Except in emergency situations, parents must give one another at least twenty-four (24) hours advance notice when canceling a contact period.

10. **Medical treatment and emergencies:** If one or more of the children become seriously ill or injured, each parent shall secure treatment and notify the other parent as soon as practicable.

11. **Communication:** Both parents shall be entitled to reasonable communication with the Children while the Children are in the other parents' care (including but not limited to telephone, e-mail, mail and text messaging). Neither parent shall interfere with the communication between the child and the other parent.

12. **School work:** Parents shall provide time for the children to study and complete homework assignments, even if the completion of work interferes with the parent's plans for the children. Both parents are responsible for providing all of the school assignments and books to the other parent at the start of their custodial time. Summer school, if necessary, for the children must be attended, irrespective of which parent has the children during the summer school period.

13. **Relocation:** Prior to a parent relocating their residence, consideration shall be given to the effect the relocation may have on the existing contact schedule. If the relocation may result in a change in the children's school, travel time to school or extracurricular activities or otherwise may adversely affect the children's best interest, the parent choosing to relocate shall obtain written approval from the other parent or a Court Order prior to relocating.

14. **Notice of change of address:** Both parents shall give written notice to the other parent immediately upon any impending change of address and/or phone number. The written notice must include the new mailing address and

phone number (in the event the mailing address is a Post Office Box, the written notice must include a physical address and/or directions to the new residence), unless a restrictive order has been obtained from the Court. A copy of the notice shall also be provided to the Family Court in the appropriate county.

15. **This order may be modified by the parties but only if both parties are in agreement with the change.** The parties shall keep a written log of all agreed changes to the schedule.

16. **THIS IS A FINAL ORDER ENTERED AFTER A FULL HEARING ON THE MERITS.** Therefore, any future modifications shall be made pursuant to 13 Del. C. § 729(c).

IT IS SO ORDERED this 27th day of April 2021.

/s/Michael W. Arrington

MICHAEL W. ARRINGTON

Judge

cc: Parties, File

Date Mailed to Counsel: 4/27/2021